

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed October 18, 2005. At the time of the Office Action, Claims 1-33 were pending in the Application. Applicant amends Claims 1, 7, 9, 11, 16-17, 19, 21, 23, 30, and 33 and cancels Claims 2, 8, and 12 without prejudice or disclaimer. The amendments and cancellations to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

In the Drawings

The Examiner objects to FIGURE 2 because no item labeled memory 203 appears in the drawing. Applicant apologizes for this clerical mistake. A corrected FIGURE 2 formal drawing for the Application has been appended to this Response. Applicant submits that the corrected formal drawing does not add any new matter to the Application and is in full compliance with 37 U.S.C. §1.81, §1.83, and §1.84.

Claim Objections

The Examiner made numerous objections to the Claims: specifically identifying a number of typographical errors. Applicant apologizes for these drafting imperfections. Applicant has made various corrections in order to address the Examiner's concern and, thereby, to overcome the Examiner's objections.

Information Disclosure Statement (IDS)

Applicant submits an IDS with this Response for the Examiner's review and consideration. Applicant respectfully requests that the Examiner formally indicate that the references were considered in the prosecution of the Application.

Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication that Claims 21 and 28 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. (See Pending Office Action, p. 15.) Applicant has elected to amend the other claims such that all of the pending claims are now allowable.

Section 102 Rejections

The Examiner rejects Claims 1, 3-4, 7, 9, 11, 13-14, 16-18, 20, 22-24, 26-27, 29-31, and 33 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,618,397 issued to Huang (hereinafter "*Huang*"). This rejection is traversed for the reasons set out below.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."² In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Using this well-settled jurisprudence, it is clear that *Huang* fails to anticipate Independent Claim 1. In particular, *Huang* fails to disclose any architecture in which "each of the media streams is synchronous ... and identifying the group of media streams by determining that the media streams in the group have the same periodicity" as is recited by the pending subject matter.

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); M.P.E.P. §2131 (*emphasis added*).

³ M.P.E.P. §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ M.P.E.P. §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

The Examiner readily concedes that *Huang* fails to offer such a teaching, but mistakenly relies on *Graves* to fill this void. At first glance, such a limitation finds relevancy in FIGURE 5 of *Graves* but, assuredly, FIGURE 5 is not dispositive in this regard. FIGURE 5 of *Graves*, which the Examiner relies on, merely provides a multiplexing of synchronous DS-1 bit streams, such as those shown in FIGURE 4. Clearly, *Graves* does not offer any recitation of *identifying the group of media streams by determining that the media streams in the group have the same periodicity*. Note that the term periodicity generally connotes cyclicity: the quality of recurring at regular intervals. *Graves* is not even tangentially relevant to such operations, nor could it handle such activities. Indeed, so disparate are the teachings of *Graves* that there is a good faith argument here that *Graves* is not even analogous art. Not only does *Graves* suffer from missing any identification step, it does not involve the accommodation of media streams, nor even mention periodicity in the context of communication flows. Applicant is fairly confident that, based on its architecture, the teachings of *Graves* that are cited by the Examiner would not even work in the configuration of *Huang*. Assuming arguendo that *Graves* is analogous art, it still does not provide the requisite disclosure for identifying the group of media streams by determining that the media streams in the group have the same periodicity, as recited by Independent Claim 1. Because *Graves* fails to disclose such a protocol, Independent Claim 1 is patentable over this reference.

Section 103 Rejections

The Examiner rejects Claims 2, 8, and 12 under 35 U.S.C. §103(a) as being unpatentable over *Huang* in view of U.S. Patent No. 4,764,921 issued to Graves et al (hereinafter “*Graves*”). The Examiner rejects Claims 5, 15, 19, 25, and 32 under 35 U.S.C. §103(a) as being unpatentable over *Huang* in view of U.S. Publication No. 2001/0025321 issued to Tang et al. (hereinafter “*Tang*”). The Examiner rejects Claims 6 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Huang* in view of U.S. Publication No. 2001/0014105 issued to Tezuka et al. (hereinafter “*Tezuka*”).

Applicant respectfully reminds the Examiner that to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one

of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.⁵ It is respectfully submitted that these rejected Claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each and every claim limitation. This prong of §103 has been evaluated extensively in the analysis provided above.

Accordingly, Independent Claim 1 is clearly patentable over the *Huang-Graves* combination for at least these reasons. Additionally, Independent Claims 1, 7, 11, 16-17, 23, 30, and 33 recite a similar (but not an identical) limitation and, therefore, are also allowable over the *Huang-Graves* combination. In addition, their corresponding dependent claims are patentable over the *Huang-Graves* combination for analogous reasons. Therefore, all of the pending claims are allowable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

⁵ See M.P.E.P. §2142-43.

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant submits herewith a check in the amount of \$180.00 to cover the cost of the IDS filing fee. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,
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